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JOHN F. DAVIS, CLERK

NO. 497

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

UNION PACIFIC RAILROAD COMPANY, et al.,
Appellants,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, et al.,
Appellees.

On Appeal from the United States
District Court for the District of Nebraska

PETITION FOR REHEARING

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December 1969

TWENTIETH CENTURY PRESS, INC., CHICAGO 60610

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Appellants herein support the proposal of the state regulatory commissions, appellants in No. 480, that, of all the issues raised in all of the appeals from the Commission's order, only the issue of statutory construction raised in No. 480 be argued in this Court.

All of the issues raised in the appeal of the Boston & Maine, et al. (No. 343), rejected by a unanimous court in Massachusetts, as well as the secondary issues raised by this appeal, as to which there was no disagreement among the members of the court below, required review of the Commission's determination of questions of cost accounting and other cost issues after the making of an extensive record. The Commission's determination of these various questions had resulted in increasing or reducing the rates

paid by railroads for the use of cars owned by other railroads.

The sole issue raised in No. 480 is very different. It presents a question of statutory construction apparent on the face of the Commission's opinion and not calling for any review of the record. The question goes to the basic structure of the Commission's prescribed rates, not to whether the rates are too high or too low. And the question of construction of the 1966 amendment of Section 1(14)(a) involves the public interest in an adequate car supply, not the purely private interests of the railroads. On this statutory question, the court below split three ways.

In lumping together all these appeals, the Government's Motion to Affirm has allowed the other issues presented by the railroad appellants to obscure the public interest issue raised in No. 480, with the result that this Court affirmed in all three appeals, thereby depriving the public interest of its day in Court. To avoid again obscuring the statutory construction issue, this Court should grant rehearing solely with respect to the issue raised in No. 480.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I, Howard J. Trienens, counsel for appellants Un
Pacific Railroad Company, et al., do hereby certify t
the foregoing Petition for Rehearing is presented in g
faith and not for delay.

HOWARD J. TRIENENS
Counsel for Appella